

The Denning Law Journal 2014 Vol 26 pp 333-336

BOOK REVIEW

Raising Freedom's Banner
How Peaceful Demonstrations have Changed the World

Paul Harris SC
Aristotle Lane, Oxford, 2015
Price £12.00, pp 265, ISBN 978-0-9933583-0-2

*Susan Edwards**

Raising Freedom's Banner is essential reading for students studying Constitutional and Administrative law, for those with an interest in human rights and also for those engaged in peaceful protests the world over. Paul Harris is a practising barrister in England and Wales and a Senior Counsel in Hong Kong. He founded the Bar Human Rights Committee of England and Wales. He has acted in several cases involving the right to peaceful protest, a right preserved by much struggle which he meticulously charts throughout the pages of his truly rich and wonderful historical and legal account. Paul Harris successfully represented Falun Gong in upholding their right to protest outside a government building in Hong Kong as part of a peaceful hunger strike against the treatment of Falun Gong in mainland China. As any visitor to Chinatown in London or indeed elsewhere will know Falun Gong simply wish to pursue their peaceful beliefs in Taoist and Buddhist teachings.¹ For Paul Harris protest is the visible existence of the bastion of freedom.

Harris embarks on this comprehensive historical and global journey documenting the history and development of protest and the evolution of laws that have both sought to defend, to limit, and to extinguish it. It was Magna Carta that established the right to peaceful protest, and then embodied in the right to petition the king.² The doctrine that the King is not beneath man, but beneath God and the Law became a foundation stone cast in eternity throughout the centuries. As Harris points out the right to petition became a key issue in the constitutional struggles between the Stuart kings and Parliament in the seventeenth century, a contest ensuing between whether the right existed or whether petitioning the King could

* Professor of Law, University of Buckingham and Editor of the *Denning Law Journal*.

¹ 2.

² 16.

BOOK REVIEW

amount to treason.³ Harris weaves his journey through time and place considering the role of protest in the process of pressure for democracy in democratic revolutions in France, Russia, Egypt and the Ukraine all of which ended in personal tragedy some bringing about the sought after change and social revolution, whilst others not so. It is impossible to do justice to this book in such a short review and in this “embarrassment of riches” it is not possible to identify which instances of protest have been more important in building our contemporary laws.

Harris researches the evolution of the law to protect the right to protest and also the attempts of the State to curtail the power of the people both thoroughly and extensively. So for example in 1715, the Riot Act was passed whereby if more than twelve people were assembled and refused to disperse within one hour they would be hanged, although the Riot Act was concerned less with protest and more with rebellion.⁴

In 1817, the Seditious Meetings Act otherwise known as the “Gagging Act” was introduced to curtail people’s power prohibiting meetings of more than fifty people and if breached then imprisonment for twelve months followed.⁵ Clearly the groundswell movement towards protecting the right to protest suffered many setbacks at each stage as Parliament tried to contain the power of the people and crush opposition. At St Peter’s Square, Manchester in 1819 some 60,000 people had gathered, including woman contingents as well as children, for a meeting to discuss Parliamentary Reform. The Yeomanry plunged into the crowd to arrest Hunt who was about to speak, it then turned into a massacre with the Yeomanry trampling the crowds and attacking them with sabres. And so at the “Peterloo Massacre” eleven people were killed and 400 injured.⁶

The power of the people in some circumstances has also led to what is called “civil disobedience” where protestors themselves act outside a law that they regard as, in itself, unlawful. And so from the suffragette movement to Gandhi who defied the “whites only” dictate and travelled on a “whites only” train in South Africa⁷ in his pursuit of “Satyagraha”, which translated means “firmness for truth”, Harris carefully documents the force of civil disobedience for real social and political change. In this “truth” Harris documents the resolve of Martin Luther King who

³ 18.

⁴ 22.

⁵ 36.

⁶ 42.

⁷ 127.

“perfected the style of demonstration that came to symbolize the Civil Rights movement” based on non-violence.⁸

But legal measures of all kinds have been historically used against the most peaceful of protestors and Harris clearly shows that in so far as the interests of the people are concerned history repeats itself. (For example, the Labour leader, Jeremy Corbyn is concerned with what he calls the “social cleansing” of London where social housing becomes unaffordable and ordinary people are forced to move out of the city). *Hubbard v Pitt*⁹ concerned the granting of an injunction against social workers who had organised a campaign on behalf of tenants in Islington and were protesting against the redevelopment by so called “entrepreneurial” developers bent on a process of “gentrification” which was driving ordinary people out of London. Prebble and Co applied for, and was granted, an injunction following their claims that the protest was going on outside their premises. Lord Denning in the Court of Appeal dissented and did not support the granting of an injunction against the protesting social workers since he did not consider a group of protestors on a Saturday morning amounted to an unreasonable use of the highway. Denning opined “Finally, the real grievance of the plaintiffs is about the placards and leaflets. To restrain these by an interlocutory injunction would be contrary to the principle laid down by the court 85 years ago in *Bonnard v Perryman*,¹⁰ and repeatedly applied ever since.”¹¹

Harris is also concerned with the power of the police who over the centuries have acted as buffers between the state and civil society in their role in maintaining public order in peaceful protest. He singles out for special treatment the several decisions of the courts with regard to the use of police powers in the policing of demonstrations. The European Court of Human Rights (ECHR) in the case of *Austin and Others v. the United Kingdom*,¹² which effectively authorises the use of “kettling” as a legitimate method of containment of protestors under certain circumstances (in this particular case anti-Capitalism demonstrators) is singled out for special comment. Harris is critical both of the House of Lords judgment in this case and the ECHR which he regards as guilty of “complacent blindness”¹³ adding, “It is tempting to feel that a court of

⁸ 151.

⁹ [1976] 1 QB 142 (Harris 171).

¹⁰ [1891] 2 Ch 269.

¹¹ *Ibid* *Hubbard v Pitt* (Harris 178).

¹² (Application nos. 39692/09, 40713/09 and 41008/09).

¹³ 180.

BOOK REVIEW

human rights which shows so little respect for liberty is scarcely worth keeping.”

The victims of police power and state power have as Harris demonstrates often been the student body whether it be students demonstrating against university fees or in other countries against state intervention or military intervention. At Kent State University¹⁴ an anti-war demonstration against the Vietnam War ended in tragedy with four students shot dead and nine others wounded. Students at Tian An Men Square suffered at the hands of the government police but their peaceful resistance had a momentum that effected significant change.¹⁵ Indeed, as he documents, the peaceful protest can be instrumental in expressing the views of the people outside the ballot box. It was “Stop the War Coalition” and other groups that protested against the involvement of the UK in the Iraq War in 2003. As Harris reminds us Tessa Jowell was going to ban the rally because amongst other things she worried about the threat to the likely damage to the grass. She relented. The late Tony Benn and the late Liberal Democratic leader, Charles Kennedy both spoke out against the war on the basis that it was illegal in the absence of a UN resolution. Given the strength of support against the Iraq war it was thought we would not see the likes of eschewing the Parliamentary process again. There have been already been demonstrations against military intervention in Syria.

As Harris demonstrates throughout this book preserving and defining the right to protest is essential for those who feel excluded from the political process and for those who distrust it. The exercise of the right to peaceful protest is the palpable evidence that freedom lives.

¹⁴ 187.

¹⁵ 216.